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KB In & Out, Inc. d/b/a Century Car Wash; Steven Rushtabadi d/b/a Lax Century Car Wash; K&G Franchise Corp. d/b/a National Car Wash; Kenny Gharib, an Individual Charged with Personal Liability; Steven Rushtabadi a/k/a Steven Rush, an Individual Charged with Personal Liability and Carwash Workers Organizing Committee of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC. Cases 31-CA-076280, 31-CA-078621, 31-CA-078622, 31-CA-082049, and 31-CA-091603.

March 30, 2016

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that KB In & Out, Inc. d/b/a Century Car Wash; Steven Rushtabadi d/b/a LAX Century Car Wash; K&G Franchise Corp. d/b/a National Car Wash; and Kenny Gharib and Steven Rushtabadi a/k/a Steven Rush, individuals (collectively the Respondents), have failed to file an answer to the compliance specification.

On April 23, 2014, the Board issued an Order¹ that, among other things, ordered the Respondent KB In & Out, Inc. d/b/a Century Car Wash (KB In & Out), to offer reinstatement to discriminatees Julio Ponce and Isaac Alvarez and make them whole for any loss of earnings and other benefits resulting from their unlawful discharges in violation of Section 8(a)(3) and (1) of the Act. On July 7, 2014, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the remedial requirements of the Board's Decision and Order.²

A controversy having arisen over the amount of backpay due the discriminatees, on October 30, 2015, the Acting Regional Director for Region 31 issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order and notifying the Respondents that an answer must be filed by November 20, 2015, in conformity with the Board's Rules and Regulations. Although not parties to the orig-

inal unfair labor practice litigation, Respondents Steven Rushtabadi d/b/a LAX Century Car Wash (LAX Century) and K&G Franchise Corp. d/b/a National Car Wash (K&G), were added to the compliance specification and are alleged to be jointly and severally liable for KB In & Out's unfair labor practices because Respondents KB In & Out, LAX Century, and K&G constitute a single-integrated business enterprise and alter egos within the meaning of the Act; Respondents KB In & Out and LAX Century constitute a single employer; and Respondent LAX Century is a successor to Respondent KB In & Out. In addition, Respondents Kenny Gharib and Steven Rushtabadi aka Steven Rush, individuals, are alleged to be personally liable, jointly and severally, to fulfill the remedial obligations of the Board's Order as alter egos of Respondents KB In & Out and K&G.

The compliance specification additionally sets forth the following allegations.

Relationships among the Respondents

1. Operations of the Respondents

(a) Since about August 2010, and continuing through about May 25, 2014, Respondent KB In & Out was a corporation with a place and business at 4700 West Century Boulevard, Inglewood, California and engaged in the operation of a carwash.

(b) Since about April 3, 2013, and continuing through about May 25, 2014, Respondent LAX Century was a sole proprietorship with a place of business at 4700 West Century Boulevard, Inglewood, California, and engaged in the operation of a carwash.

(c) Since about November 6, 2009, and at least through the date of the compliance specification's issuance, Respondent K&G has been a corporation with a place of business at 9001 National Boulevard, Los Angeles, California engaged in the operation of a carwash.

2. Respondent LAX Century and Respondent KB In & Out—Single Employer/Alter Ego and Successor

(a) Since about April 3, 2013, and continuing through May 25, 2014, Respondents KB In & Out and LAX Century had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

(b) About April 3, 2013, Respondent LAX Century was established by Respondents KB In & Out and Steven Rushtabadi as a disguised continuance of KB In & Out.

(c) Since about April 3, 2013, and continuing through May 25, 2014, Respondents KB In & Out and LAX Century were affiliated business enterprises with common ownership, management, supervision, and financial control; had formulated and administered a common labor policy; shared common premises, facilities, equipment, and personnel with each other; had interrelated opera-

¹ Unpublished Order, adopting, in the absence of exceptions, the decision of Administrative Law Judge Dickie Montemayor issued on March 19, 2014 (JD(SF)-08-14).

² No. 14-71501.

tions with common businesses of operating a carwash; and held themselves out to the public as a single-integrated business enterprise.

(d) About April 3, 2013, Respondent LAX Century took over the business of Respondent KB In & Out and continued to operate the business of KB In & Out in basically unchanged form.

(e) Before engaging in the conduct described above, Respondent LAX had actual notice of KB In & Out's potential liability in Cases 31–CA–076280, et al. because Steven Rushtabadi, the sole proprietor of LAX Century, was a corporate officer of Respondent KB In & Out and witnessed the commission of some of KB In & Out's unfair labor practices alleged in the charges.

(f) Based on the operations and conduct described above in paragraphs 1(a) through (b), and 2(a) through (c), Respondent KB In & Out and Respondent LAX Century are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

(g) Based on the operations and conduct described above in paragraphs 1(a) through (b), and 2(d) through (e), Respondent LAX Century continued the employing entity with notice of Respondent KB In & Out's potential liability to remedy its unfair labor practices, and Respondent LAX Century is a successor to KB In & Out.

(h) Based on the operations and conduct described above in paragraphs 1(a) through (b), and 2(a) through (g), and below in paragraphs 3 through 5, Respondent LAX Century is jointly and severally liable with the other named Respondents for remedying Respondent KB In & Out's unfair labor practices, including the payment of backpay, interest, and other relief required by the Board's Order as enforced by the Court.

3. K&G and KB In & Out/LAX Century—Single-Integrated Business Enterprise/Alter Ego

(a) At all material times, Respondents KB In & Out, LAX Century, and K&G have been affiliated business enterprises with common financial control, management, and supervision; and have provided financial assistance to each other without documentation or corporate resolutions.

(b) Based on the operations described above in paragraphs 1(a) through (c), 2(a) through (e), and 3(a), Respondents KB In & Out, LAX Century, and K&G constitute a single-integrated business enterprise.

(c) At all material times, Respondents KB In & Out, LAX Century, and K&G have been under the financial and operational control of Respondents Kenny Gharib and Steven Rushtabadi.

(d) Based on the operations and conduct described above in paragraphs 1, 2, and 3(a) through (c), Respondents KB In & Out, LAX Century, and K&G are, and

have been at all material times, alter egos within the meaning of the Act.

(e) Based on the operations and conduct described above in paragraphs 1, 2, and 3(a) through (d), and below in paragraphs 4 through 5, Respondent K&G is jointly and severally liable with the other named Respondents for remedying Respondent KB In & Out's unfair labor practices, including the payment of backpay, interest, and other relief required by the Board's Order as enforced by the Court.

4. Individual Liability of Kenny Gharib

(a) At all material times, Kenny Gharib, an officer of Respondents KB In & Out and K&G, was personally involved in the commission of the unfair labor practices by Respondent KB In & Out.

(b) At all material times, Kenny Gharib, as president and sole owner of Respondents KB In & Out and K&G, has controlled the day-to-day management, labor relations policies, business operations, and financial resources of Respondents KB In & Out and K&G.

(c) At all material times, Respondent Gharib failed to adhere to corporate formalities in the management and direction of Respondents KB In & Out and K&G by:

- (i) failing to maintain an arm's length relationship between Respondents KB In & Out, K&G, and himself;
- (ii) commingling and using his personal assets in the operation of Respondents KB In & Out and K&G;
- (iii) commingling and using corporate assets of Respondents KB In & Out and K&G for his personal use and the personal use of his brother, Steven Rushtabadi; and
- (iv) diverting corporate funds to his personal accounts and using corporate funds to pay for personal expenses.

(d) Respondent Kenny Gharib engaged in the conduct alleged in paragraph 4(c) in order to render Respondent KB In & Out insolvent and make it incapable of fulfilling its obligation to pay backpay to employees, including by transferring corporate funds and corporate assets to himself and to Respondent LAX Century without fair consideration.

(e) By the conduct described above in paragraphs 3 and 4(a) through (d), Kenny Gharib, individually, acted as an alter ego of Respondents KB In & Out and K&G, and is therefore an individual Respondent who is personally liable, jointly and severally, with the other named Respondents for remedying Respondent KB In & Out's unfair labor practices, including the payment of backpay, interest, and other relief required by the Board's Order as enforced by the Court.

5. Individual Liability of Steven Rushtabadi

(a) At all material times, Respondent Steven Rushtabadi was the sole proprietor and officer of LAX Century.

(b) At all material times, Respondent Steven Rushtabadi was an officer and agent of Respondents KB In & Out and K&G, and controlled the assets and financial resources of Respondents KB In & Out and K&G.

(c) At all material times, Respondent Steven Rushtabadi failed to adhere to corporate formalities in the management of KB In & Out and K&G by:

- (i) failing to maintain an arms' length relationship between Respondents KB In & Out, K&G, and himself;
- (ii) failing to maintain adequate corporate records;
- (iii) commingling and using corporate assets of Respondents KB In & Out and K&G for his personal use and the personal use of his brother, Kenny Gharib;
- (iv) diverting to himself the assets of Respondents KB In & Out and K&G; and
- (v) transferring corporate assets without fair consideration.

(d) Respondent Steven Rushtabadi had knowledge of Respondent KB In & Out's liability in Board Case 31-CA-076280, et al. as he was present at the March 2012 meeting where Respondent Kenny Gharib engaged in conduct which the Board found violated Section 8(a)(1) of the Act.

(e) Respondent Steven Rushtabadi engaged in the conduct alleged in paragraph 5(c) in order to render Respondent KB In & Out insolvent and make it incapable of fulfilling its obligation to pay backpay to employees, including by transferring corporate funds and corporate assets to himself and to Respondent LAX Century without fair consideration.

(f) As sole proprietor of LAX Century, and by the conduct described in paragraphs 2, 3, and 5(a) through (e), Steven Rushtabadi, individually, acted as an alter ego of Respondents KB In & Out and K&G, and is therefore an individual Respondent who is personally liable, jointly and severally, with the other named Respondents for remedying Respondent KB In & Out's unfair labor practices, including the payment of backpay, interest, and other relief required by the Board's Order as enforced by the Court.

Failure to file an answer

Although properly served with a copy of the compliance specification, the Respondents failed to file an answer. By letter dated November 23, 2015, counsel for the General Counsel advised the Respondents that no answer to the compliance specification had been re-

ceived, and that unless an answer was filed by December 7, 2015, a motion for default judgment would be filed. The Respondents failed to file an answer.

On December 14, 2015, upon learning that Respondent Kenny Gharib was incarcerated in the Los Angeles Metropolitan Detention Center (LAMDC), counsel for the General Counsel sent Gharib a second letter informing him that he had until December 28, 2015, to file an answer to the compliance specification. However, Gharib failed to file an answer.

Motion and Order

On January 25, 2016, the General Counsel filed with the Board a Motion to Transfer and Continue Matter before the Board and for Default Judgment, with exhibits attached. On January 28, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 24, 2016, the Board issued an Order Correcting and Supplemental Notice to Show Cause why the motion should not be granted, correcting the error in the prior order regarding the date the General Counsel's motion was filed, and setting a new response date. The Respondents filed no response. The allegations in the motion and in compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the Respondents are jointly and severally liable for the backpay due Ponce and Alvarez as described in the compliance specification and we will order the Respondents to pay those amounts to the discriminatees, plus interest accrued to the date of pay-

ment. Further, we find that backpay, expenses, and interest continue to accrue until the Respondent makes a valid offer of reinstatement to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondents, KB In & Out, Inc. d/b/a Century Car Wash; Steven Rushtabadi d/b/a LAX Century Car Wash; K&G Franchise Corp. d/b/a National Car Wash; Kenny Gharib and Steven Rushtabadi aka Steven Rush, individuals, Inglewood and Los Angeles, California, their officers, agents, successors, and assigns, shall make whole discriminatees Julio Ponce and Isaac Alvarez, by paying them the amounts following their names, plus additional net backpay which accrues to the date the Respondent makes them valid offers of reinstatement, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws.³

³ As set forth in the compliance specification, the Respondents are also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment.

<u>Employee</u>	<u>Backpay owed</u>	<u>Excess Tax Amount</u>
Julio Ponce	\$40,246	\$1504
Isaac Alvarez	<u>\$22,103</u>	<u>\$720</u>
Totals	\$62,349	\$2224

Total amount due: \$64,573

Dated, Washington, D.C. March 30, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD